

REMARKS

Claims 17 and 18 are added, and therefore claims 9 to 18 are now pending and being considered.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

It is respectfully requested that the Office acknowledge whether the drawings are accepted.

With respect to paragraph three (3) of the Office Action, the Abstract has been revised as suggested. No new matter has been added and support is provided by the present application. Approval and entry are respectfully requested. It is therefore respectfully requested that the objection to the Abstract be withdrawn.

With respect to paragraph five (5) of the Office Action, claims 9 to 16 were rejected under 35 U.S.C. § 102(e) as anticipated by Oswald et al., U.S. Patent No. 6,907,335.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art.” (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

While the anticipation rejections may not be agreed with, to facilitate matters, claim 9 has been rewritten to provide that *the remote sensor is used to perform a plausibility check for the velocity of the vehicle*, and that *a sensor arrangement determines the velocity of the*

vehicle. In the context of the exemplary embodiment, a velocity is determined by a sensor arrangement 14, as provided for in claim 9 as presented. This determined velocity is then subjected to a plausibility check by another sensor, namely the remote sensor.

In contrast, the "Oswald" reference refers to a pre-crash sensor system, in which a velocity of an obstacle is determined and the vehicle velocity is known. The relative velocity between the vehicle and the obstacle is then determined.

Accordingly, the "Oswald" reference does not identically describe (or even suggest) the claim 9 feature in which *the remote sensor is used to perform a plausibility check for the velocity of the vehicle*. Claim 9 is therefore allowable, as are its dependent claims 10 to 16.

New claims 17 and 18 do not add any new matter and are supported by the present application. Claims 17 and 18 depend from claim 9 as presented, and are therefore allowable for the same reasons as claim 9 as presented.

It is therefore respectfully submitted that claims 9 to 18 are allowable.

Conclusion

It is therefore respectfully submitted that all of pending and considered claims 9 to 18 are allowable. It is therefore respectfully requested that the objection and rejections be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Dated: 7/18/2006

Respectfully submitted,

By: 

Gerard A. Messina
Reg. No. 35,952

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646